UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROBERT M. ZUTOFT, PLAINTIFF, v. DISCOVER BANK, WELTMAN, WEINBERG & REIS, CO., LPA, BARRISTER INVESTIGATIONS & FILING SERVICE, INC., and THOMAS E. MANSBRIDGE, DEFENDANTS.	))))))))))))))	Civil Action No._______ Jury Demanded

COMPLAINT

Plaintiff, Robert M. Zutoft, brings this action to secure redress from unlawful credit and collection practices engaged in by Defendants Weltman, Weinberg & Reis Co., LPA, Discover Bank, Thomas E. Mansbridge, and Barrister Investigations & Filing Service, Inc. Plaintiff alleges violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq*. ("FDCPA") and the Illinois Consumer Fraud Act, 815 ILCS 505/1 *et seq*..

VENUE AND JURISDICTION

1. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 42 U.S.C. 1983, and 28 U.S.C. §§ 1331, 1337, and 1367, as Defendants do business in the State of Illinois and because a material portion of the events at issue occurred in this District.

2. Venue in this District is proper under 28 U.S.C. § 1391(b) because Defendants' collection demands were received here, a material portion of the events at issue occurred in this District, and Defendants reside and transact business here.

PARTIES

3. Plaintiff, Robert M. Zutoft, ("Plaintiff"), is an individual and resident of Cook County, Illinois, and a "consumer" as defined at 15 U.S.C. § 1692a(3) of the FDCPA. At all times relevant hereto, Plaintiff resided at 10928 South Kostner Ave in Oak Lawn, Illinois ("Home").

4. Defendant, Weltman, Weinberg & Reis Co., LPA ("Weltman") is a law firm that regularly collects defaulted consumer debts by mail, telephone and via filing lawsuits, and is thus a "debt collector" as that term is understood in the FDCPA, § 1692a(6).

5. Weltman maintains a website (www.weltman.com) which contains a "consumer collections" section, that states in part as follows as of the date this complaint is filed:

Helping You Manage Your Consumer Collection Matters

Weltman, Weinberg and Reis Co., LPA (WWR), the nation's largest creditors' rights law firm, was founded more than 85 years ago to provide comprehensive collection services to our clients. Not only have we established ourselves as a recognized leader in our industry, we have also built a technology platform and service model to handle any type of collection matter. We represent clients of all sizes, from the world's largest financial institutions to small consumer matters, all with one simple goal – to leverage our experience and expertise in proving you a reliable and consistent recovery to fit the needs of your organization.

Although we offer many custom programs, one of our strengths is to match the requirements of our clients, whether that be in the intake of information, account tracking and reporting, or specialized funds management and accounting procedures. We partner with each client to meet the specific business objectives and strategies for each portfolio and then design a program in skip tracing, asset searches, credit bureau checks, early out programs, collateral recovery, auditing, file reporting and accounting procedures. We maintain a state of the art collection operation directly representing clients in Illinois, Indiana, Kentucky, Michigan, New Jersey, Ohio and Pennsylvania, in conjunction with our WWR National Litigation Networks of qualified attorneys, integrating the filing of legal action with our collection activity anywhere a debtor or debtor's assets may be located. This allows our clients a single source attractive alternative to using multiple law firms throughout the country.

WWR has created specialty groups of attorneys in addressing the needs of our clients, to handle matters beyond traditional retail collections. Weltman, Weinberg & Reis Co., LPA provides comprehensive consumer and commercial/complex collections services including, but not limited to the following areas:

Consumer/Retail Collections

- Skip Tracing
- Asset Searches
- Early Out/Cure Programs
- Pre-suit Collections
- Collateral Recovery
- First Party Collections
- Demand Letter Program
- Predictive Dialer Contacts

Legal Action Recovery

- Demand Letter Program
- Immediate Suit Program
- Post–Judgment Executions
- Wage Garnishments
- Bank Attachments
- Filing & Renewal of Judgment Liens
- Debtor's Exams
- Creditor's Bills

6. Discover Bank ("Discover") is a national bank authorized to do business in Illinois, and which does business in Illinois.

7. Defendant Barrister Investigations & Filing, Inc., ("Barrister") is a detective agency that also acts debt collector as defined by the FDCPA, 15 U.S.C § 1692a(6), and is located in and does business within this District.

8. Barrister maintains a website, www.barristerillinois.com, which states in part as follows as of the date this complaint is filed: "Barrister Investigations & Filing Service, Inc. has a fully trained staff to provide superior legal services in a timely and

efficient manner. Barrister Investigations & Filing Service, Inc. has provided service to some of the largest attorneys in Illinois by servicing over one million documents from mortgage foreclosures, credit collections, divorces and more. We accomplish this by using advanced software applications which allow the client web access to view status, print affidavits and print invoices. All clients' data is stored at a secured and protected offsite location to ensure the safety of all documentation."

9. Barrister acts as a debt collector by providing debt collection support services to collection attorneys, third-party debt collectors and debt buyers, via skip-tracing, "legal service" as stated on its website, and by servicing documents as stated on its website.

10. Thomas E. Mansbridge ("Mansbridge") is an agent and/or employee of Barrister that provides collection support for Barrister and the debt collectors for which Barrister provides collection support, and is thus a debt collector defined by the FDCPA, 15 U.S.C. § 1692a(6).

FACTS COMMON TO ALL COUNTS

11. Plaintiff incurred a debt due to his use of a Discover credit card to purchase goods and services for personal, family and/or household purposes. Plaintiff thus incurred a debt ("alleged debt") as that term is understood under § 1692a (5).

12. The Discover credit card was not issued to a business.

13. According to Discover, the alleged debt thereafter went into default.

14. Discover thereafter hired Weltman to collect the alleged debt from the Plaintiff.

15. On or about September 24, 2015, Weltman filed a complaint on behalf of Discover against Plaintiff to collect the Alleged Debt, in the Circuit Court of Cook County, First Municipal District, styled *DISCOVER BANK V. ROBERT M. ZUTOFT,* Case No. 15-M5-5273 ("State Action"). (Exhibit A, Small Claims Complaint).

16. Weltman thereafter hired Barrister to support efforts to collect the alleged debt from Plaintiff.

17. Defendant Barrister has an Illinois Private Detective Agency License # 117-000883.

18. Thereafter, Barrister, by and through its employee Thomas E Mansbridge, executed an Affidavit of Service ("Affidavit") in which he states under oath that he served Plaintiff personally with a copy of the complaint and summons on June 15, 2016 at 12:34 p.m., at 10928 South Kostner Ave in Oak Lawn, Illinois. (Exhibit B, Affidavit).

19. Mr. Mansbridge's statements in the Affidavit, were false as he never made personal service on Plaintiff. (Exhibit B, Affidavit).

20. The Affidavit states that Mr. Mansbridge served the Alias Summons and Complaint on Plaintiff personally at his Home on June 15, 2016 at 12:34 p.m. (Exhibit B, Affidavit).

21. In truth and in fact, Mr. Mansbridge did not serve Plaintiff with process personally on June 15, 2016 at 12:34 p.m.

22. Rather, Barrister and Weltman caused a copy of the Alias Summons and Complaint to be wedged into the storm door of Plaintiff's Home, in order to induce Plaintiff to believe that he was served with process, and that he would thereafter have to

appear in the State Action by the date stated in the Summons, and participate in defending himself in the State Action.

23. Further, upon information and belief, the signature appearing on the Affidavit is not that of Mr. Mansbridge, as it does not match, or even closely approximate, a previous signature of Mr. Mansbridge provided by Barrister to Plaintiff.

24. Weltman filed the Affidavit with the Circuit Court of Cook County, Illinois, so that Plaintiff would be induced to believe that service was proper if he had checked the court docket, even though it was not.

25. Plaintiff was distressed upon becoming aware of Defendants' false position that he was served with process, as he did not know how to proceed in the State Action.

26. Defendants conspired to deprive Plaintiff of equal protection of the law, namely to deprive him of his due process right to proper notice of the lawsuit.

27. Mr. Mansbridge, on behalf of the other Defendants, made false statements in an attempt to enforce collection of a consumer debt.

28. Mr. Mansbridge, Barrister and Weltman were not serving or attempting to serve legal process when they placed a copy of the Alias Summons and Complaint on the storm door of Plaintiff's Home, and when they filed an Affidavit containing materially false statements for the purpose and intent of collecting the alleged debt by obtaining a judgment against Plaintiff, without Plaintiff's knowledge.

29. Rather, Defendants placed a copy of the Alias Summons and Complaint on the storm door of Plaintiff's Home, made false sworn written statements, and filed and presented said statements in court to induce Plaintiff to believe that service had been

effected, and that personal jurisdiction had been obtained over Plaintiff—to deceptively induce Plaintiff to file an Appearance in the State Action so that Defendants could attempt to enforce and collect the alleged consumer debt from Plaintiff.

30. The June 15, 2016 State Action complaint, that was placed on Plaintiff's front door, was a "communication" to Plaintiff that was made in connection with the collection of the alleged debt.

31. **Section 1692g of the FDCPA provides as follows:**

(a) Notice of debt; contents Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—
(1) the amount of the debt;
(2) the name of the creditor to whom the debt is owed;
(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

32. The State Action complaint that was placed on the door at Plaintiff's Home was the "initial communication" with Plaintiff in connection with the collection of the alleged debt.

33. The 7th Circuit has unequivocally held that "The FDCPA requires debt collectors to send consumers a written validation notice containing certain information within five days of the initial communication with a consumer regarding an alleged debt." *Sims v. GC Servs. L.P., 445 F.3d 959, 962* (7th Cir. 2006) citing *Olson v. Risk Management Alternatives, Inc.,* 366 F.3d 509, 511 (7th Cir.2004) (emphasis added);

Marshall-Mosby v. Corporate Receivables, Inc*.,* 205 F.3d 323, 324 (7th Cir. 2000); *McKinney v. Cadleway Props., Inc.,* 548 F.3d 496, 502-03 (7th Cir. 2008)(" A debt collector violates §1692g(a) by not sending a §1692g(a) notice along with or within five days of its initial communication with a debtor." See also *Riggs v. Prober & Raphael, A Law Corporation*, 681 F.3d 1097, 1099; 2012 U.S. App. LEXIS 11631 (9th Cir. 2012).

34. Defendants did not mail or send or provide Plaintiff with a "Notice of Debt" at any time, thus foreclosing Plaintiff's ability to contest the alleged debt.

35. The State Action complaint did not contain a Notice of Debt, and no Defendant sent Plaintiff a Notice of Debt within 5 days of the initial communication with Plaintiff, which as stated was the Stat Action complaint that was placed on the front door of Plaintiff's Home.

36. Plaintiff thereafter was forced to appear in hearings in the State Action on multiple occasions, and was granted leave to file a motion to quash service in the State Action. (Exhibit C, July 25, 2016 Order).

37. Defendants violated section 1692g of the FDCPA by failing to send Plaintiff a Notice of Debt within 5 days of the initial communication with Plaintiff.

38. On October 6, 2016, Judge Thomas W. Murphy entered an Order in the State Action quashing service against Plaintiff, and dismissing the State Action. (Exhibit D, October 6, 2016 Order).

39. Defendants' misrepresentation that they personally served Plaintiff in the State Action, execution of a false affidavit, and the filing of the same in the State Action were each done in connection with the collection of the Alleged Debt from Plaintiff, and each was a coercive act calculated to fool Plaintiff into believing that he was served with process, and that he would have to file an Appearance in the State Action.

40. As a debt collector, Weltman may be held vicariously liable for Barrister's collection activity.

41. Discover may be held vicariously liable for the actions of the other Defendants, as it directed, ratified and approved the actions taken by Defendants.

42. Defendants' collection communications are to be interpreted under the "unsophisticated consumer" standard. *See Gammon v. GC Services, Ltd. Partnership*, 27 F.3d 1254, 1257 (7th Cir. 1994).

COUNT I-FAIR DEBT COLLECTION PRACTICES ACT-WELTMAN, MANSBRIDGE AND BARRISTER

43. Plaintiff realleges and incorporates paragraphs 1-42 into this count.

44. Defendants acted as debt collectors, as defined by the FDCPA, with respect to Plaintiff, they each attempted to collect a defaulted consumer debt via their respective actions, specifically described *supra*.

45. Defendant Barrister regularly attempts to collect debts by assisting debt collection lawyers, like Weltman, in debt collection by, for example, filing false affidavits in connection with the collection of debts.

46. Under 15 U.S.C. § 1692a(6)(D), any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt is not included as a debt collector, but the language of § 1692a(6)(D) extends the exemption to a person ***only*** "while serving or attempting to serve legal process." See *Spiegel v. Judicial Attorney Servs., Inc.*, 2011 WL 382809 (N.D. Ill. Feb.1 2011; *Romea v. Heiberger & Assocs.*, 163 F.3d 111 (2nd Cir. 1998); *Andrews v. S. Coast Legal Servs.*, 582 F. Supp. 2d 82 (D. Mass. 2008); and *Flamm v. Sarner & Assocs.*, P.C., 2002U.S. Dist. LEXIS 22255 (E.D. Penn. 2002); *Sneed v. Winston Honore Holdings, LLC*, No. 16 C 2564, 2017 U.S. Dist. LEXIS 15235, at *11 (N.D. Ill. Feb. 3, 2017).

47. Defendants Barrister and Mr. Mansbridge were not serving or attempting to serve "legal process" but rather they deceptively placed the Complaint and Alias Summons on the storm door of Plaintiff's Home, which was not service of legal process.

This fact, in addition to Defendants' act of drafting, preparation and filing of false affidavits of service, and providing false testimony—all to aid in collection of the consumer debt from Plaintiff, was calculated to induce Plaintiff believe that he was properly served, and to coerce him to believe that he would thus be required to file an Appearance in the State Action so that Defendants could bypass the Illinois legal requirements pertaining to obtaining service over Plaintiff.

48. Section 1692e of the FDCPA states in relevant part that a debt collector, "may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt" and §1692e(13) prohibits the "false representation or implication that documents are legal process."

49. Defendants made false, deceptive and misleading representations in connection with the collection of a debt, in violation of Section 1692e, by means of the false Affidavit of Service they prepared, filed and communicated, and by means of the complaint and summons placed on the front door of Plaintiff's Home, which falsely and deceptively was an attempt to induce Plaintiff that he was properly served, when in fact he was not.

50. Defendants violated section 1692e (13) of the FDCPA by placing a copy of the Alias Summons and Complaint filed in the State Action on the storm door of Plaintiff's Home, which falsely implied that service had been obtained over Plaintiff and that the documents were "legal process."

51. Section 1692e(5) of the FDCPA proscribes the "threat to take any action that cannot legally be taken or that is not intended to be taken."

52. Defendants falsely threatened that Plaintiff was required to enter an Appearance in the State Action when they placed a copy of the Complaint and Alias Summons on the storm door of Plaintiff's Home, which documents indicated that Plaintiff was required to file an Appearance by a date certain when, in fact, Plaintiff was not required by law to do so.

53. Section 1692e(2) of the FDCPA proscribes "The false representation of— (A) the character, amount, or legal status of any debt; or (B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

54. Defendants violated Section e(2)(B) by falsely claiming that they had served Plaintiff, and thus they misrepresented the services rendered in connection with the collection of the Alleged Debt.

55. Section 1692e(10) of the FDCPA proscribes "The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer."

56. Defendants violated Section e(10) by means of the complaint and summons placed on the storm door of Plaintiff's Home, which falsely and deceptively was an attempt to induce Plaintiff that he was properly served, when in fact he was not, all in order to collect the Alleged Debt from him via litigation.

57. Defendants violated section 1692g of the FDCPA by failing to send Plaintiff a Notice of Debt within 5 days of the initial communication with him that was made in connection with the collection of the alleged debt.

58. Plaintiff was damaged as a direct and proximate result of Defendants' conduct in that he incurred financial loss and lost time, and suffered, *inter alia*, emotional distress, worry, aggravation, anxiety, restlessness, nervousness, and inconvenience.

59. At all times relevant hereto, all actions taken by Barrister were authorized, directed, and/or ratified by Weltman.

60. Weltman hired Barrister despite the fact that it was aware that over a hundred motions to quash have been filed and granted, within the last year in Cook County alone, based on false service allegedly made by Barrister on behalf of Discover.

61. At all times herein mentioned, Defendants are and were agents and/or joint venturers of each other, and in doing the acts alleged herein were acting within the course and scope of such agency.

62. Each of the Defendants had actual and/or constructive knowledge of the acts of the other Defendants as described herein, and ratified, approved, joined in, acquiesced in, and/or authorized the acts of the other, and/or retained the benefits of said acts.

WHEREFORE, Plaintiff, Robert M. Zutoft, asks that the Court enter judgment in their favor and against Defendants Weltman, Mansbridge and Barrister, as follows:

(A) Statutory damages from each Defendant pursuant to the FDCPA, 15 U.S.C. §1692(k)(a)(2);

(B) Actual damages pursuant to the FDCPA, 15 U.S.C. §1692(k)(a)(1) ;

(C) Reasonable attorney's fees and costs; and

(D) Any other relief that this Court deems appropriate and just under the circumstances.

COUNT II-VIOLATION OF ILLINOIS CONSUMER FRAUD ACT-DEFENDANTS DISCOVER AND BARRISTER

63. Plaintiff realleges and incorporates paragraphs 1-42 into this Count.

64. 815 ILCS 505/1 *et. seq*, prohibits unfair and deceptive practices committed in the course of trade and commerce in Illinois.

65. Defendant Discover engaged in the course of trade and commerce when it hired Weltman and Barrister to aid in collection efforts against Plaintiff, when they filed and provided a false Affidavits of Service against Plaintiff, and when they placed a copy of the Complaint and Alias Summons on Plaintiff's Home door to induce Plaintiff to believe he was properly served, at a time that no service had been obtained over Plaintiff.

66. Defendant Barrister is engaged in the distribution of services that directly and indirectly affect the people of Illinois, namely services related to serving process.

67. Defendants Barrister and Discover committed a deceptive act or practice when they drafted, executed and provided to the court and to Plaintiff a false Affidavit of Service that misrepresented that Plaintiff was served personally with a copy of the alias summons and complaint in the State Action, and when they placed a copy of the complaint and summons on Plaintiff's Home door to induce Plaintiff to believe that he was properly served at a time that no service had been obtained over Plaintiff.

68. Weltman hired Barrister, on behalf of Discover, to support efforts to collect the Alleged Debt. Barrister offered its services for sale and Discover purchased them.

69. Discover directed, ratified and accepted the benefits of Weltman and Barrister's actions.

70. Discover hired Weltman and Barrister to support efforts to collect the Alleged Debt.

71. Defendants committed a deceptive act or practice when they falsely testified in an Affidavit of Service drafted and filed by Weltman, that Barrister he served Plaintiff personally.

72. Defendants did not serve Plaintiff with process at any time to the date of filing of this Complaint.

73. Defendants intended that Plaintiff would rely on the deception, and intended that he would be led to believe that since a copy of the summons and complaint were placed on his Home door, that they had obtained jurisdiction against Plaintiff, and that he would believe that he would have to file an Appearance in the State Action, and participate in the State Action proceedings, as a result.

74. Plaintiff suffered actual damages as a proximate result of Defendants' conduct in that Plaintiff incurred financial loss and lost time by having to pay money to travel to court and attend hearings to void the alleged service that Defendants alleged was had upon him personally, in the State Action.

75. Defendants' conduct also constituted an unfair practice.

76. Defendants' conduct offends public policy.

77. Defendants' practice offends public policy as it has been established by the Constitution, statute and the common law.

78. Defendants' act of providing a false Affidavit of service offends the public policy of the constitutional guarantee of the due process right to notice and an opportunity to be heard.

79. Defendants' act of providing false testimony offends public policy as established by § 720 ILCS 5/32-2 Perjury statute.

80. Defendants' act of providing false testimony is immoral.

81. Defendants' act of providing false witness is unethical act by person who is an Illinois licensed private detective.

82. Defendants' act of sewer service is oppressive, unscrupulous and causes substantial injury to consumers.

83. Sewer service has long been recognized as harmful unlawful practice. See *Scarver v. Allen*, 457 F.2d 308, fn. 1 (7th Cir. 1972); *United States v. City of Philadelphia*, 644 F.2d 187 (3rd Cir. 1981); *Blouin v. Dembitz*, 489 F.2d 488 (2nd Cir. 1973); See *United States v. Wiseman*, 445 F.2d 792, 796 (2nd Cir.), cert. denied, 404 U.S. 967, 30 L. Ed. 2d 287, 92 S. Ct. 346 (1971); *United States v. Brand Jewelers, Inc.*, 318 F. Supp.1293 (S.D. N.Y. 1970); *Spiegel v. Judicial Attorney Servs., Inc.*, 2011 WL 382809 (N.D. Ill. Feb.1 2011).

84. At all times herein mentioned, Defendants, both individually and collectively, are and were agents and/or joint venturers of each other, and in doing the acts alleged herein were acting within the course and scope of such agency.

85. Each of the Defendants had actual and/or constructive knowledge of the acts of the other Defendants as described herein, and ratified, approved, joined in, acquiesced in, and/or authorized the acts of the other, and/or retained the benefits of said acts.

WHEREFORE, Plaintiff, Robert M. Zutoft, asks that the Court enter judgment in her favor and against Defendants Discover and Barrister, as follows:

(A) Actual damages;

(B) Punitive Damages;

(C) Reasonable attorney's fees and costs; and

(D) Any other relief that this Court deems appropriate and just under the circumstances.

JURY DEMAND

Plaintiffs demand trial by jury.

By: /s/ Mario Kris Kasalo
Mario Kris Kasalo

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NOTICE OF LIEN AND ASSIGNMENT

Please be advised that we claim a lien upon any recovery herein for 1/3 or such amount as a court awards. All rights relating to attorney's fees have been assigned to counsel.